

LOCAL LAW NO. - 2008

BY COUNCIL PRESIDENT LESNICK, COUNCILMEMBER MCDOW

A LOCAL LAW AMENDING THE AFFORDABLE HOUSING
ORDINANCE FOR THE CITY OF YONKERS.

The City Council of the City of Yonkers does hereby enact as follows:

Section 1. Article XV of Chapter 43 of the Code of the City of Yonkers,
entitled "Affordable Housing", is hereby amended to read as follows:

ARTICLE XV
Affordable Housing

§ 43-190. Title.

This article shall be known as the "Affordable Housing Ordinance" of the City
of Yonkers.

§ 43-191. Declaration of purpose.

This Affordable Housing Ordinance is adopted in furtherance of the
following, related and more specific purposes:

- A. To implement a program whereby all new multifamily housing developments in Yonkers will be required to provide assisted-housing units not to exceed 20% of the maximum aggregate number of units authorized for construction in exchange for a variety of zoning and other mandated incentives as set forth in Section 202 of this chapter.
- B. To provide for the construction of housing units for rental or sale that will be affordable to households earning between 50% and 120% of the New York Metropolitan Area median income.
- C. To provide for changes in existing zoning and increases in land use densities so as to facilitate construction of multifamily residential buildings containing a mix of market rate and assisted units.
- D. To provide for a variety in the size of assisted units.
- E. To make assisted housing available throughout the City.
- F. To promote the provision of assisted housing in a dispersed manner so as to avoid the undue concentration of both public and assisted units in any neighborhood of Yonkers.

- G. To provide measures to ensure that assisted-housing units remain affordable for specified periods of time.
- H. To foster to the extent possible the use of such architectural and design devices as will minimize the visual impact of such inclusionary housing developments on the surrounding community and any distinction between assisted and market-rate units.

§ 43-192. Effectiveness of article.

This article shall be in effect from the date of enactment.

§ 43-193. Definitions of terms.

As used in this article, the following terms shall have the meaning indicated:

ASSISTED UNIT -- A dwelling unit, as defined herein, which has been made affordable to a specified income group as defined herein, and for which affordability controls, as defined in §§ 43-201 and 43-202, shall apply.

DWELLING UNIT -- A room or group of rooms intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities for the exclusive use of a single household.

INCLUSIONARY DEVELOPMENT -- A multifamily housing project in which a proportion of the dwelling units are assisted units.

MULTIFAMILY DEVELOPMENT -- One or more residential buildings, each containing three or more attached dwelling units. Multifamily developments shall include but are not limited to townhouses, garden apartments, flats, mid-rise apartment buildings and high-rise apartment buildings.

§ 43-194. Districts; provisional districts; boundary locations.

A. Districts.

1. This article constitutes an overlay district to the M, MG, B, A and BA Zones and such other zones in which multifamily housing is or may be permitted in Yonkers, including those zones that permit multifamily housing as a special use. This article shall apply to multifamily housing, including projects (whether or not presently in the planning stage) which will require zoning changes, variances, special exceptions or other discretionary approvals from the City to begin construction, as of the date of this article.

(2) In addition, this Chapter specifically permits developers to apply for zoning changes to build multifamily inclusionary developments in any district in Yonkers not zoned M, MG, B, A and BA and to seek the incentives offered herein.

§ 43-195. Required number and distribution of assisted units in inclusionary developments.

- A. Multifamily housing developments shall be inclusionary developments containing a set-aside of assisted units equal to 20% of the maximum aggregate number of units authorized for construction in such developments, except as provided in Subsections B and C.
- B. In multifamily inclusionary developments in the A and BA Zones, and in such other zones which presently permit a density of 60 units per acre or more, the required set-aside of assisted units may be reduced, but no less than 10% of the maximum aggregate number of units authorized for construction in such development shall be set aside as assisted units, provided that the maximum density bonus that will then be given to the developer shall not be in excess of 50% over the permitted zoning. If the bonus sought is in excess of the 50% over the permitted zoning, the 20% set-aside shall apply.
- C. Notwithstanding Subsections A and B, the City may exempt any multifamily housing development of fewer than 10 units from inclusionary development; provided, however, that such exemption shall not be applied to circumvent the set-aside requirements set forth in Subsections A and B of this section.

§ 43-196. Income distribution.

- A. Multifamily inclusionary development shall be required to include an income distribution for assisted units to ensure that 30% of the total number of assisted units be provided on terms affordable to families earning no more than 50% of the median income in Westchester County; 45% of the total number of assisted units be provided on terms affordable to families earning between 50% and 80% of the median income in such area; and 25% of the total number of assisted units be provided on terms affordable to families earning between 80% and 100% of the median income in such area; provided, however, that a developer may propose to modify the income distribution of assisted units set forth above subject to approval by the City.
- B. Notwithstanding Subsection A of this section, if the aggregate minimum number of assisted units to be allocated to any of the three income groups is attained before the minimum is reached for remaining groups, assisted units constructed thereafter shall be

allocated (in the same proportion) only to income groups whose minimum has not theretofore been attained.

§ 43-197. Bedroom distribution.

- A. Multifamily inclusionary development shall provide the following bedroom distribution for the assisted units:
 - 1. The number of two-bedroom assisted units shall equal at least 60% of the total number of assisted units.
 - 2. The number of three-bedroom (or larger) assisted units shall equal at least 30% of the total number of assisted units.
 - 3. The number of one-bedroom assisted units may not exceed 10% of the total number of assisted units.

§ 43-198. Affordability criteria.

- A. Definition. The term "affordable," as used in this article, shall mean with respect to each income category described in this article, assisted-housing units:
 - 1. Sold at a price entailing a monthly carrying cost (assuming a 10% downpayment, a 30-year self-liquidating mortgage, including principal and interest payments, property taxes, homeowners' association fees, maintenance or carrying costs, but excluding utilities) not exceeding at any time 30% (or such higher percentage as permitted by the applicable housing finance program) of the annual gross income of the a household occupying the assisted unit; or
 - 2. Rented at a rent (including an allowance for utilities) not exceeding at any time 30% of the annual gross income of the household occupying the assisted unit.
- B. Term, transfer restrictions, and occupancy criteria.
 - 1. Assisted-housing units shall be rented or sold only to households meeting (at the time of rental or sale) the income qualifications contemplated in § 43-196 of this chapter as from time to time adjusted for Westchester County. Such units shall be the primary residence of the occupants, and subletting and assignments shall be prohibited.
 - 2. All assisted-housing units subject to purchase shall have resale-price limitations (enforced by covenants running with the land, restrictions on registration of title, or any other appropriate legal

mechanism approved by the City) which will ensure that, for a period of 30 years from the time of their first sale, such housing units are sold or resold only to, and at a price affordable to, a household which is, at the time of purchase, in the same group (referred to in § 43-196 of this chapter and Paragraph 5 of the SSLTPO and as at that time adjusted) as was the seller at the time such previous owner first occupied the unit.

3. The owner of assisted-housing units for rent shall be required to assure that, for a period of 30 years from the time of first rental, such units are affordable to, and are re-rented only to, a household which is, at the time of re-rental, in the same income group (referred to in § 43-196 of this chapter and Paragraph 5 of the SSLTPO and as at that time adjusted) as was the previous tenant at the time such previous tenant first occupied the unit. Assisted units for rental may be converted to units for sale, subject, however, to the same ownership eligibility standards as applicable to units for sale for the remainder of the thirty-year period from original occupancy referred to in the previous sentence. All tenants in place at the time initial notice of conversion is provided who meet the income qualifications set forth in § 43-196 of this chapter (as at that time adjusted) shall be permitted to purchase their unit at a price affordable to them as defined herein.

4. Exempt transfers.

a. The affordability and other restrictions on resale and/or occupancy shall not apply to:

1. The transfer of ownership of an assisted unit between spouses or former spouses ordered as a result of a judicial decree of divorce or separation agreement (not including transfers to third parties).

2. The transfer of ownership of a unit between family members as a result of inheritance.

3. Formerly HUD-insured multifamily projects which, following default on the mortgage, HUD acquires or is mortgagee in possession ("MIP"), to the extent that the provisions are inconsistent with applicable HUD statutes and regulations regarding management or disposition of HUD-owned projects or projects for which HUD is MIP.

b. However, transfers referred to in Subsection B(4)(a)[1] and [2] do not extinguish such restrictions (whatever be the legal mechanism through which the restrictions are enforced) which shall be fully complied with in the event of any subsequent sale or rental of a unit not specifically exempted

hereby.

c. An exempted transfer as heretofore provided in this subsection shall not toll the running of the thirty-year period referred to in Subsection B(2) hereof.

5. This section shall not be interpreted as in any way affecting or diminishing, and shall apply together with, occupancy criteria (to be applied in good faith by the City or each developer) substantially of the type set forth in 24 C.F.R. § 960.205 to ensure that the personal and financial background of each potential tenant or owner of assisted units will not be detrimental to the viability of the housing development.

6. To the extent not inconsistent with other applicable occupancy and financial criteria, the City shall endeavor to give occupancy priority in the following order to:

a. Persons who, between January 1, 1971, and the date assisted housing is made available, have been residents of public or subsidized housing in the City of Yonkers. Such persons shall be given the first opportunity to apply for such housing, which opportunity shall be afforded up until 30 days following the date the final assisted-housing units pursuant to this article are made available. Occupancy choice from among such persons applying shall be on a first-come, first-served basis.

b. Residents of the City of Yonkers.

c. Persons employed in the City of Yonkers.

7. The City of Yonkers Affordable Housing Department shall be responsible for prescreening applicants who wish to occupy (as tenants or purchasers) assisted units and for maintaining a list of such prescreened applicants. Owners or developers of housing projects containing assisted units may be allowed to select tenants or purchasers of assisted units from among the applicants prescreened by such office. The Office shall be responsible for monitoring the good-faith application of any discretion vested in such owners or developer with respect to the choice of tenants or purchasers of assisted units.

§ 43-199. Architectural integration.

A. Developers of multifamily inclusionary developments shall make no locational distinctions between assisted and other units, provided that, for any building eight or more stories in height, the top two floors may be reserved for market rate housing.

- B. Assisted units, whether for sale or rental, shall meet HLTD minimum property standards with respect to square footage. Assisted units need not be furnished with each and every amenity that a developer may choose to include in a market rate unit. Developers shall be encouraged to foster, to the extent feasible, the use of such architectural and design devices as will minimize the visual impact of such housing developments on the surrounding community and any distinction between assisted and market units.

§ 43-200. Staging.

- A. In all multifamily inclusionary developments, the following staging schedule shall apply for rental or sale units:

Percentage of Market Rate Units Receiving Certificates of Occupancy	Percentage of Assisted Units Receiving Certificates of Occupancy
Up to 25%	0% (none required)
25% + 1 unit	At least 10%
50%	At least 50%
75%	At least 75%
100%	100%

- B. Certificates of occupancy shall be issued to market rate units when the required percentage of assisted units for the respective stage has been completed.

§ 43-201. Applicability

The zoning regulations for multifamily inclusionary developments shall allow for departures from the provisions of Table 43-3 of this chapter. EN

§ 43-202. Zoning regulations.

- A. To promote the goals of this article, and specifically to make the provision of assisted housing set-asides feasible within inclusionary developments, the City shall offer incentives to developers of multifamily inclusionary developments which may include, but are not limited to, the following departures from underlying zoning:
1. Increase of the maximum permitted height of a building.
 2. Increase of the maximum permitted floor area ratio of a building.
 3. Change of the formulas set forth in § 43-33N of this chapter for the

calculation of floor area ratios for mixed-use buildings so as to lower the contribution of stories devoted exclusively to nonresidential uses.

4. Reduction of the minimum permitted lot width or lot area for apartment houses.

5. Reduction of the minimum permitted lot area per family.

6. Reduction of the minimum permitted rear yard or minimum permitted front yard.

B. Notwithstanding anything to the contrary contained in this chapter, a particular housing development may contain units in excess of the number which would otherwise have been allowed by such chapter.

C. Departures from underlying zoning regulations for multifamily inclusionary developments shall be determined based on submissions made by the developer as provided in § 43-203 of this article taking into consideration such factors as, but not limited to; the provisions of the underlying zoning, including but not limited to height, bulk and density; the impact of development on surrounding land uses and neighborhoods; the allocation to specific income groups of assisted units which the developer (subject to specific provisions of this article) elects to make; the degree to which assisted financing/grants or mandated incentives are available; prevailing economic and housing-market conditions; and allowance for a reasonable profit margin.

§ 43-203. Expedited review; submission.

A. Expedited review. The City shall establish an expedited review process for multifamily inclusionary housing projects pursuant to this article to include priority scheduling and expedited review and negotiation.

B. Presubmission review by City of Yonkers Affordable Housing Department.

1. Developers of multifamily inclusionary projects are encouraged to seek the assistance of the City of Yonkers Affordable Housing Department in preparing conceptual development plan submissions as set forth in Subsection C below. The City of Yonkers Affordable Housing Department shall work with developers in determining the types of zoning and other incentives required to make the provision of assisted housing set-asides financially feasible within inclusionary developments, and is specifically empowered to make recommendations to the City as to the need for any mandated incentive not expressly set forth in § 43-202 of this article, including tax abatement, waiver of applications and/or processing fees for building approvals, use of Affordable Housing Trust Funds and/or use of financial assistance from the Industrial Development Authority.

2. Developers of multifamily inclusionary projects intending to make application to the City for tax abatement, waiver of application and/or processing fees for building approvals, funding from the Affordable Housing Trust Fund and/or financial assistance from the Industrial Development Authority are required as part of the presubmission review process to obtain recommendations from the City of Yonkers Affordable Housing Department concerning the granting of such assistance before making application to the City Council, as set forth below. The City of Yonkers Affordable Housing Department shall forward its recommendations to the Yonkers Planning Board and Yonkers City Council.

C. Submission of conceptual development plan; review; approval.

1. After having sought the assistance and recommendations of the City of Yonkers Affordable Housing Department as outlined in Subsection B above, developers of multifamily inclusionary projects shall submit to the Yonkers Planning Board a conceptual development plan, which shall contain the following information:

- a. General location of existing and proposed structures, including the location of the assisted-housing units.
- b. General type of existing and proposed uses, including a description of the proposed bedroom and income distributions, and proposed tenure structure of the assisted-housing units.
- c. Conceptual rendering of the exterior design treatment of the building(s) and a typical floor plan, including a floor plan showing where the assisted units will be located.
- d. A completed environmental assessment form (EAF).
- e. Existing topography and soils information, and general grading and drainage proposals.
- f. A map delineating those areas on the site comprising floodplains, wetlands, lakes, ponds, streams and other surface water bodies, and areas with slopes in excess of 15%, and a statement as to what, if any, disturbances are contemplated in these areas, and the extent to which any mitigation measures are proposed.
- g. Existing and proposed internal streets, driveways and points of access to existing mapped streets.
- h. Parking and loading areas, showing size and location of stalls and aisles.
- i. Landscaped areas and proposed screening.

j. A written statement and supporting documentation indicating the traffic impacts of the project on the adjoining roadway network and what, if any, off-site traffic improvements are proposed.

k. A written statement and supporting documentation indicating whether any land or buildings listed on the State or National Registers of Historic Places will be altered and describing the nature of the proposed alterations.

l. A statement and supporting documentation as to the capacities of existing water and sewer lines and related facilities, and that such water and sewer lines are adequate to serve the project; if not adequate, proposed improvements that are required.

m. A statement and supporting documentation as to the capacities of existing gas and electric lines and related facilities, and that such gas and electric lines are adequate to serve the project; if not adequate, proposed improvements that are required.

n. Existing and proposed location and type of major signs and lighting.

o. A written and graphic description of various aspects of the conceptual development plan, including any proposed phasing of development activities, and a statement of the applicant's interest in the land as well as evidence to support the applicant's right to make the application and use the land.

p. A written statement indicating which, if any, sources of municipal assistance or funding (e.g., tax abatements, financing, grants) the applicant seeks to use and specifying the type of assistance, if any, that will be sought from the county, state or federal governments.

q. A written statement describing the types of incentives that the applicant considers necessary and sufficient to make the provision of the assisted housing set-aside economically and socially feasible, and the specific provisions of the underlying zoning from which the applicant is requesting departure as set forth in § 43-202 of this article.

r. A written statement and supporting documentation describing the reasons for the required departures from the underlying zoning, including but not limited to a financial pro forma showing likely profit margins with and without the departures being requested.

s. A written statement and supporting documentation indicating the manner in which the applicant intends to administer the assisted units in compliance with § 43-198 of this article, including sales prices and/or rent levels for the assisted units.

t. A written and graphic description of the area within a four-hundred-foot radius

from the property and statement and supporting documentation as to the impacts that the project will have on such area.

u. A written statement and supporting documentation projecting the additional number of school-age children generated from both the market rate and assisted units and their impact on the existing school system. The developer shall simultaneously transmit such written statement and supporting documentation to the Yonkers Board of Education.

2. The Planning Board through the Planning Director, shall have 15 working days to request additional information from the applicant; otherwise the conceptual development plan shall be deemed complete. The Planning Board shall then have 45 working days from the date on which the conceptual development plan is deemed complete to act upon the application; otherwise the application shall be deemed approved. The building regulations contained in the conceptual plan shall be deemed permitted only in the manner stipulated by the Yonkers Planning Board in its approval. Any material or substantial amendment or amendments to the conceptual plan must be submitted to the Yonkers Planning Board for approval in the same manner as the original plan.

3. Upon approval of the conceptual development plan by the Yonkers Planning Board, as set forth in Subsection C(2) above, the developer may elect to make application to the Yonkers City Council for any other incentives considered necessary to effectuate the multifamily inclusionary development as proposed (but not expressly set forth in § 43-202 of this article), including tax abatement, waiver of application and/or processing fees for building approvals, funding from Affordable Housing Trust Funds, and/or financial assistance from the Industrial Development Authority. Developers applying for such incentives shall submit to the Yonkers City Council the complete conceptual development plan as submitted to and approved by the Planning Board. Upon receipt of such applications, the City Council shall have 30 days to act upon the request; otherwise the application shall be deemed approved.

4. Site plans.

a. Developers of multifamily inclusionary projects shall include in the application for building permits a site plan containing the following:

1. Property lines and related street, right-of-way and easement lines as determined by survey.
2. Location of existing and/or proposed buildings and structures and uses, including the location of the assisted units.
3. Layout of existing and proposed off-street parking areas showing the details of aisles, driveways and each parking space.

4. Existing topography of the site and immediately adjacent property as revealed by contours or key elevations as may be required by the City Engineer, and any proposed regrading of the site.

5. Existing and proposed stormwater drainage facilities, sidewalks, curbs, curb cuts and driveway aprons and similar structures.

6. Existing and proposed stormwater drainage facilities, sidewalks, curbs, curb cuts and driveway aprons and similar structures.

b. The Commissioner of the Department of Housing and Buildings shall forward one copy each of the site plan and accompanying documentation to the Planning Director, who shall ensure consistency between the site plan and the approved conceptual development plan before issuance of a building permit.

c. No building permits shall be issued for any such building, structure or use until the Commissioner of the Department of Housing and Buildings has received a written assurance of consistency from the Planning Director, except that, if said Director shall fail to report within 15 days, the proposed site plan shall be considered approved. The Planning Director's review of the site plan shall note any changes from the approved conceptual plan. The Director shall not approve any material or substantial changes to the approved conceptual plan which are not in accordance with the declaration of purpose of this article; any such changes shall require approval of the Planning Board.

d. If the developer is required to make any material or substantial amendments to the site plan based upon the review of the Planning Director, the Commissioner of the Bureau of Housing and Buildings shall again forward amendments to the Planning Director for re-approval prior to issuing any building permit for such amendment.

5. If the developer does not file an application with the Commissioner of the Department of Housing and Buildings, and the Commissioner of the Department of Housing and Buildings does not issue a building permit, within two years after the Yonkers Planning Board's approval of a conceptual plan, then the zoning governing the land delineated in the conceptual plan shall be voidable by the City, so as to permit the development of other multifamily inclusionary developments in Yonkers.

§§ 43-204 through 43-209. (Reserved)

Section 2. This ordinance shall take effect immediately.